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SUBJECT: SOME MOVEMENT TOWARD POLITICAL REFORMS

11. (SBU) Summary: The process of selecting a new Supreme Court is moving forward, with assistance from the UN, OAS, and others. The government's parallel effort to formulate a political reform referendum based on citizen input is back on track, after an initial wobble. The OAS is receiving USG support for the Supreme Court process, and recently inquired about possible USG support for the referendum process as well. We view the first as essential to build rule of law here, and the second as desirable, but with results less certain. End Summary.

Supreme Court Being Put Back Together

12. (U) Ecuador has lacked Supreme and Constitutional Courts since April, when Congress disbanded them shortly after ex-president Lucio Gutierrez was ousted on April 20. Among other cases piling up without resolution in the meantime, ironically, is one against Gutierrez for statements undermining stability from abroad. Gutierrez recently added another--a complaint demanding his restitution to office.

13. (SBU) Lacking a constitutional basis to select an entire new court, Congress in April chose to create one by law. The resultant selection process has been provisionally blessed by the international community, in recognition of the urgent need to strengthen the judiciary and rule of law here. To avoid flaws in the new law, however, UN Rapporteur Leonardo Despouy recommended that the selection committee simply ignore some provisions of the law. The majority of the 4-member committee have recently resolved to do so. Supporters of the process, including Despouy and the OAS representative here, believe it desirable to shield the new court from future constitutional challenges by putting the selection process to a popular referendum (hypothetically, this could be added to the political reform referendum).

14. (U) In addition to the UN, the OAS is observing the selection process, sending recognized regional legal experts (Sonia Picado of Costa Rica and Jose Antonio Viera Gallo of Chile) to Ecuador August 22-26, with USG support. The Madrid Group and Community of South American Nations have also been actively monitoring the process, with visits by Brazilian FM Amorim and former Spanish PM Felipe Gonzalez. OAS representative Carlos Ocampos told us on August 19 the process was proceeding, and should culminate in a new court by the end of the year. The new Supreme Court would subsequently name the members of a National Judicial Council to nominate a new Constitutional Court.

Government's Referendum Process Moving Forward

15. (U) The Government's process to solicit input from the public on desired political reforms, led by Vice President Serrano with the assistance of the independent Modernization Commission (CONAM) suffered a setback when President Palacio unilaterally announced his own preferred reforms on August 2. After Congress returned those proposals summarily, Palacio recovered by apologizing to the President of Congress and reaffirming his support for the Vice President's efforts. Those efforts resulted in 25,000 suggestions from the public, which are being sorted by a team of nine judicial experts funded by the Spanish, who have actively supported CONAM's referendum efforts.

16. (SBU) OAS representative Ocampos told PolChief and AID Deputy Director on August 19 that the Vice President had recently requested OAS support (\$60,000) to fund 15-20 Ecuadorian judicial experts, to seek consensus between the government, Congress and civil society on how to winnow the public's suggestions into a viable referendum. The experts will include regional and party balance, to show inclusiveness and build potential for consensus. Ocampo requested USG support to the OAS for this purpose. We will meet with the OAS experts at the conclusion of their visit next week to hear their views.

Comment

17. (SBU) We are encouraged by progress toward selection of a new Supreme Court, which is essential to begin rebuilding Ecuadorian jurisprudence and rule of law. The outcome of a

referendum, however, is less certain, since little consensus exists on what reforms will strengthen Ecuador's unstable democratic institutions (a range of possibilities has been floated already, including the creation of a Senate, election of Congress by district, elimination of the second round of voting, and others). Consensus building is clearly necessary, however, to make any progress in this direction. Any viable reform will require consensus among the government, political parties, and civil society. Even then, a positive result will require convincing a politically unsophisticated electorate to vote in favor.

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